



INDIANA UTILITY REGULATORY COMMISSION
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IN THE MATTER OF THE PETITION)
OF THE CITY OF GARY, INDIANA)
REQUESTING THE INDIANA UTILITY)
REGULATORY COMMISSION TO)
ESTABLISH THE TERMS AND)
CONDITIONS OF THE SALE OF)
CERTAIN PROPERTY OF NORTHERN)
INDIANA PUBLIC SERVICE COMPANY)
TO THE CITY OF GARY AND FOR A)
DETERMINATION OF THE VALUE OF)
SUCH PROPERTY UNDER INDIANA)
CODE SECTIONS 8-1-2-92 AND 8-1-2-93)
RESPONDENT: NORTHERN INDIANA)
PUBLIC SERVICE COMPANY)

CAUSE NO. 42643

FILED

FEB 16 2005

INDIANA UTILITY
REGULATORY COMMISSION

You are hereby notified that on this date the Indiana Utility Regulatory Commission ("Commission") caused the following entry to be made in this Cause:

On February 15, 2005, Northern Indiana Public Service Company ("NIPSCO") filed a *Motion to Quash* ("Motion") in the above captioned Cause. In its Motion NIPSCO seeks to quash a subpoena, obtained by Intervenor the Board of Commissioner's of LaPorte County, Indiana ("LaPorte County") and issued to Nicholas Phillips, Jr., pursuant to 170 IAC 1-1.1-14(c). Also on February 15, 2005, the Petitioner, City of Gary, Indiana filed *Petitioner's Joinder in Respondent's Motion to Quash*. On February 16, 2005, LaPorte County filed a *Response to NIPSCO's Motion to Quash* ("Response"). Also on February 16, 2005, NIPSCO filed *Northern Indiana Public Service Company's Reply to LaPorte County's Response to Motion to Quash*.

NIPSCO indicates in its Motion that "[t]he subpoena purports to command Mr. Phillips to appear at the hearing in the cause commencing on February 17, 2005 'and then and there to testify on behalf of Intervenor LaPorte County with regard to the prefiling testimony submitted' by him on October 12, 2004." Motion at 2. In support of its Motion NIPSCO indicates, *inter alia*, that LaPorte County is bound by the prefiling deadlines for this proceeding. The prefiling testimony submitted by LaPorte County consisted of the Prefiled Direct and Supplemental Rebuttal Testimony of Reed W. Cearley. NIPSCO contends that LaPorte County has no right or opportunity to call any other witnesses at the hearing.¹ *Id.*

¹ NIPSCO also argued in its Motion that the Commission has no legal power or authority to compel a resident of another state to travel to Indianapolis to testify at a hearing; and, that the Subpoena was not properly served. As the determinations set forth in this Docket Entry resolve the issue on other grounds, the Presiding Officer did not consider these additional arguments.

170 IAC 1-1.1-14 sets forth the requirements for subpoenas issued by the Commission, and states, in relevant part that: "(a) The commission shall, at the request of any party, issue subpoenas for the attendance of witnesses and subpoenas duces tecum. Subpoenas shall be signed by the secretary or a commissioner and shall be issued under the seal of the commission. (b) Parties shall prepare subpoenas for issuance and shall be responsible for service. Service must be shown by the return of the sheriff or the affidavit of the party or attorney serving the subpoena. The return or affidavit shall be filed promptly with the commission. (c) Upon motion made at or before the time specified for compliance in that subpoena, the presiding officer or commission may quash or modify the subpoena if it is unreasonable, oppressive, or untimely...."

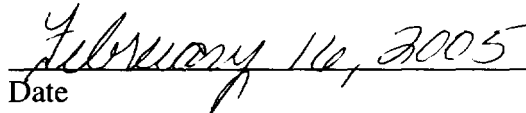
As LaPorte County properly requested that a subpoena be issued to Mr. Phillips under this section, a subpoena was issued by the Commission pursuant to the directive contained in the rule. While 170 IAC 1-1.1-14(a) requires the *issuance* of a subpoena requested by a party, 170 IAC 1-1.1-14(c) authorizes the Presiding Officer to *quash or modify* the subpoena if it is unreasonable, oppressive, or untimely.

The Presiding Officer, having reviewed the various filings submitted on this issue, and being duly advised in the premises, hereby finds that the subpoena is contrary to the Prehearing Conference Order approved in the Cause in which the Commission established a schedule for the submission of prefiled testimony. Pursuant to that schedule, LaPorte County's testimony consists of the Prefiled Direct and Supplemental Rebuttal Testimony of Reed W. Cearley. LaPorte County did not prefile any additional testimony and therefore cannot call any other witnesses to testify at the Evidentiary Hearing. Accordingly, as the subpoena is contrary to the prefiling deadlines set forth in the Commission's Prehearing Conference Order, the subpoena served on Mr. Phillips is unreasonable, oppressive and untimely. Therefore, the Presiding Officer hereby GRANTS the Motion filed by NIPSCO. The subpoena issued to Nicholas Phillips, Jr., in this matter is hereby QUASHED.

IT IS SO ORDERED.



Scott R. Storms, Chief Administrative Law Judge


Date